

# **JUDICIAL COUNCIL MEETING**

## **Minutes**

**Monday, January 29th, 2008**

**Judicial Council Room**

**Judge Gary Stott, Presiding**

### **ATTENDEES:**

Hon. Gregory Orme  
Hon. Brendan McCullagh  
Hon. Gary D. Stott  
Hon. Michael D. Lyon  
Hon. Judith Atherton  
Hon. Mark Andrus  
Hon. William Barrett  
Hon. Michael Kwan  
Scott Sabey, esq.  
Hon. Michael Westfall  
Hon. Ronald Nehring  
Hon. Jody Petry

### **STAFF PRESENT:**

Daniel J. Becker  
Debra Moore  
Rick Schwermer  
Tim Shea  
Ray Wahl  
Holly Frischknecht  
Nancy Volmer

### **EXCUSED:**

Chief Justice Christine M. Durham  
Judge Hans Chamberlain

### **GUESTS:**

#### **1. WELCOME AND APPROVAL OF MINUTES: (Judge Gary Stott)**

Judge Stott welcomed everyone to the meeting and excused Chief Justice Durham and Judge Hans Chamberlain. The Council reviewed the minutes and the following motion was made.

**Motion:** Judge Lyon motioned to approve the minutes, the motion was seconded and passed unanimously.

#### **2. ADMINISTRATOR'S REPORT: (Daniel J. Becker)**

Mr. Becker reported the following:

- Chief Justice Durham gave the State of the Judiciary last Monday on the first day of the Legislative Session. The speech was delivered in a joint meeting with the House and Senate and was well received.
- The appropriations process continues. The base budgets were considered last week along with select expansion items. The court's present their building block requests on January 31st. The GAL budget is being considered today.
- The First District Nominating Commission met last Thursday to conduct interviews for

the judicial vacancy. The Commission submitted five names and the Governor will consider those nominees after the 10 day comment period.

-Wendell Roberts has been selected as the new 6<sup>th</sup> District TCE. Mr. Roberts has been the Chief P.O. in the 8<sup>th</sup> District.

-Judge Judith Billings, with the Appellate Court, will retire at the end of this year.

-Myron March had to undergo emergency surgery last week and is doing well. He will be recuperating for the next few weeks out of the office.

#### **4. COMMITTEE REPORTS:**

##### ***Management Committee Report:***

Judge Stott referred the Council members to the minutes and highlighted the discussion on the computer use policy for judges that will be reviewed later in the meeting.

##### ***Policy and Planning Meeting:***

Judge Orme reported that the Policy and Planning Committee reviewed the judicial resources library rule that requires that all judges get a hard copy of the Utah Advanced Report. This publication has now become very expensive due to the limited number of subscribers. The Committee approved the recommendation to amend the rule to state that each judge is not entitled to a hard copy of the report. This change will effect the justice court judges the most and will now be published for comment. The Committee also discussed private information and public records in order to keep secure information private in court records. A protected cover sheet could be used for the private information needed. The Committee finished their work on historically significant cases that will be discussed further in the Council meeting. The Policy and Planning Committee will continue to consider the rule that governs the executive sessions of the Council meeting to ensure that Council members keep those conversations in confidence.

##### ***Liaison Committee:***

Justice Nehring reported that a more in depth description of legislation will be considered later in the meeting. Justice Nehring expressed appreciation for the input of the judges during the past few weeks regarding legislation.

##### ***Bar Committee Report:***

Scott Sabey reported that the Bar hosted a luncheon for the attorney legislators last week. The Bar Commission received an update on the mentoring program and a final report could come in March, although it is hoped the report will be available sooner.

#### **5. 2008 REPORT TO THE COMMUNITY**

Ms. Volmer reported that the theme of this year's Annual Report was "Our Children, Our Future." Ms. Volmer indicated that the report is sent to all the Legislators and also to local leaders, libraries and other state agencies. This report is also widely used when juries are called. The Council thanked Ms. Volmer for her work on the report.

#### **6. E-WARRANT AND DOCUMENTATION AUTHENTICATION DEMONSTRATION: (Ron Bowmaster)**

Mr. Bowmaster reviewed the history of the e-warrant process. Mr. Bowmaster demonstrated online how the e-warrant will work from the law enforcement standpoint and from the judges perspective. Mr. Bowmaster also demonstrated online how the documentation authentication works.

Mr. Bowmaster indicated that the documentation authentication process is much more secure than hard copy documents. Mr. Bowmaster reported that the Technical Committee recommended that documentation validation required three things, they are: a certifiable and accessible electronic court record; documents filed with the court should be digitally certified by the court when filed, and; documents retrieved from the court's computing system should be authenticated when presented to the user. Council members expressed concern over how to tell if a document has been authenticated once it has been printed. Mr. Bowmaster reported that documents retrieved from the Utah State Court's e-filing system are self-authenticating.

## **7. BOARD OF JUVENILE COURT JUDGES REPORT: (Judge Dane Nolan)**

Judge Nolan thanked the Council for their support of the Board of Juvenile Judges. Judge Nolan introduced Ray Wahl, Katie Gregory, and Susan Burke with the Juvenile Court. Judge Nolan indicated that Judge Higbee is the chair of the Board and Judge Nolan is the vice-chair. Judge Nolan reviewed the members of the Board. Judge Nolan reported on the Board's goals for 2007-2008. They include:

- |                                  |   |
|----------------------------------|---|
| -Support CARE User Group         | -Support expansion of the Model           |
| -Support new CIP grants          | Delinquency Court                         |
| -Support publication of the      | -Complete update of Judicial Workload     |
| Juvenile Report Card             | formula                                   |
| -Support the development of      | -Create a blog for Juvenile Judges        |
| an outcome evaluation            | -Fully support the Comprehensive Clerical |
| -Continue to support initiatives | Study committee and receive regular       |
|                                  | reports                                   |
- for Child Welfare reform

Judge Nolan reported that the Board has been considering the judicial workload formula. The formula was last reviewed in 1998. The intent is for the bench to review and approve the formula in April and then bring the request to the Council soon afterwards. Judge Nolan reported that some changes in the formula include new categories such as expedited shelter/motion to change custody, detention hearings, and contempt/probation violations. Other categories were renamed and delinquency and child welfare reviews were separated. The admit/denial ratios and travel times were also updated. The new formula also considers the work of specialty courts. A comprehensive survey was sent to all juvenile judges that helped determine the time that various hearings took to complete. These responses were then compared to the digital audio system recordings.

Judge Nolan reported that some of the biggest challenges the Juvenile Court faces include filling clerical vacancies with qualified applicants, meeting child welfare statutory time frames, addressing the ethnic diversity of court patrons, providing assistance to the workload 'hot spots' in the state, and cultivating effective interventions for youth in urban and rural courts. The Council thanked Judge Nolan for his presentation and for all the work of the Board of

Juvenile Court Judges.

#### **8. CERTIFICATION OF JUDGES: (Tim Shea)**

**Motion:** A motion was made to move into executive session to consider the certification of judges and the litigation report.

**Motion:** A motion was made to move out of executive session, the motion was seconded and passed unanimously.

**Motion:** Judge Brendan McCullagh motioned to approve the certification of all judges except Judge Lyon and Judge Orme. The motion was seconded and passed unanimously.

**Motion:** Judge McCullagh motioned to certify Judge Lyon, Judge Westfall seconded the motion and the motion passed unanimously.

**Motion:** Judge McCullagh motioned to certify Judge Orme, the motion was seconded and passed unanimously.

Judge Orme and Judge Lyon abstained from voting on their certifications.

#### **9 DESIGNATION A CASE AS HISTORICALLY SIGNIFICANT: (Tim Shea)**

Mr. Shea reported that the Policy and Planning Committee is proposing that Rule 4-203 regarding historically significant cases be modified. Mr. Shea indicated that the proposed changes to the rule states that anyone can request that a case be titled historically significant in order to preserve all the records associated with that case. This information would then be kept in state archives. Judge Atherton indicated that the sensational evidence items associated with some historically significant cases not be included as part of the information saved. Mr. Shea reported that the rule could specify that evidence not be included as protected under this rule. Discussion took place about who could designate a case historically significant and what role the presiding judge has in this process. Mr. Shea indicated that the language to the rule will be changed to account for the presiding judge's role in deeming a case historically significant.

**Motion:** Judge Kwan motioned to approve Rule 4-203 with the language modifications made regarding presiding judges. The motion was seconded and passed unanimously.

#### **10. DRUG COURT REPORT: (Judge Dennis Fuchs)**

Mr. Schwermer reported that as an increasing number of drug and specialty courts have been created throughout the state, the Judicial Council found that more information is needed from these courts to determine and maintain the proper oversight needed. Senior Judge Dennis Fuchs was charged with evaluating each drug court and reviewing how each court is working under the new specialty court rule.

Judge Fuchs reported he visited 48 courts including the juvenile dependency, delinquency and adult drug courts. Judge Fuchs visited one diversion court. There are approximately 59 courts operating as drug courts throughout the state. Judge Fuchs recognized

Kelly Quartermaine from Utah Substance Abuse and thanked her for the support that Utah Substance Abuse offers the courts.

Judge Fuchs found a discrepancy between treatment options and staff practices between drug courts off the Wasatch Front. Judge Fuchs recommended that the juvenile courts look into the possibility of consolidating some drug courts and provide case load breaks to the judges that preside over a drug court. Judge Fuchs reported that not all courts are screening for high risk, high need, which leads to the wrong type of treatment for many offenders. Judge Fuchs indicated that research has shown that combining low risk and low need individuals with high risk and high need individuals leads to more challenges for the low need and low risk person.

Mr. Schwermer reported that the drug court program and DORA should be complimentary. However, DORA does not specify treatment types. With the limited amount of money appropriated for DORA, assessments of offenders are not being done to the scale the legislation intended. Only a portion of the assessments are taking place and this is limiting the knowledge the courts are able to attain about the level of drug use that a felon has. Judge Fuchs reported that a continuum of care for offenders is not taking place which limits the information in determining if the substance abuse service providers are meeting minimum requirements. Judge Fuchs emphasized the importance of the initial screening of individuals because the success of the participant is largely based on them receiving the correct treatment.

Judge Fuchs reported that some districts struggle with maintaining the team mentality with all agencies involved in the drug court process. Judge Fuchs suggested that the rule be evaluated to determine if the elements of a strong team are clearly stated. Judge Fuchs also reported that the fees charged in each district for drug court services are different and need to be consistent.

Judge Fuchs strongly recommended that the Council follow up on the findings he made while visiting each drug court. Mr. Schwermer reported that the Council must consider if the Specialty Court Rule should be reviewed again in order to require that the courts are consistent and accountable to research findings. Now that more funding is available for drug courts, it is the Council's responsibility to make sure that the money is being used in the most effective way possible. Mr. Schwermer recommended that the Council extend Judge Fuchs' contract and have him help in reviewing the RFP's from drug courts.

Mr. Becker indicated that as long as the Council has a criteria to hold the problem solving courts to, it will be easier to monitor and ensure that the quality of service and implementation of best practices are actually taking place.

Judge Stott indicated that the Council agrees with Judge Fuchs' recommendations and will expect that he further report on his additional work and findings in the future.

Mr. Becker reported that it is intended that Judge Fuchs' contract will be extended and he will work with the team at the AOC, Substance Abuse and Corrections to further evaluate and monitor the progress of the specialty courts and the rule that applies.

## **11. PROBLEM SOLVING COURT APPROVAL: (Rick Schwermer)**

Mr. Schwermer reviewed the application for the Provo City Justice Court problem solving court. The Council discussed the impact this new court would have on staff, clerks and judges in Provo.

**Motion:** Scott Sabey motioned to approve the specialty court request from the Provo Justice Court. The motion was seconded and passed with Judge Barrett, Judge Westfall, and Judge McCullagh opposing the motion.

**12. LEGISLATIVE UPDATE: (Rick Schwermer)**

Mr. Schwermer reported that SB 105 is the Judicial Performance Evaluation Commission bill. The Liaison Committee's position on this bill is that the new commission is not needed based on the current evaluation system. However, if the Legislature believes that a change in the performance evaluation process is needed, the Liaison Committee supports this commission in place of other mechanisms of evaluation. The Liaison Committee has suggested that Constitutional and scoring mechanism issues may exist. Representatives from the Colorado Think Tank that helped create this commission also testified in favor of the Court's position on scoring. Questioning witnesses and litigant remains an issue of concern with the bill. Mr. Becker indicated that Lowry Snow, President of the Bar, will address the witness/litigant issue with the sponsor before the final draft of the bill is prepared. Mr. Schwermer reported that Senator Bell, Senator Hillyard, and other members of the Senate are supportive of creating the new commission. Judge Stott indicated that there is a broad feeling from the Legislature that the process of the evaluations must change. The Council discussed at length what kinds of criteria could be created by the commission that are currently not specified in the bill. Justice Nehring indicated that an independent commission could help the judiciary by having a separate voice speak to the process of evaluation and respond to some of the fringe groups that often attack the judges. Mr. Schwermer reported that at this point it appears there will be no yes/no questions on the survey.

Mr. Schwermer indicated that the Justice Court bill will be discussed more on Wednesday, but it has not yet been heard by committee.

Mr. Schwermer reported that the parent-time mediation bill will be up again on Wednesday. The ongoing issue of rule making continues to be discussed. The Supreme Court added a section to Rule 404 that addresses a sexual predator's propensity to re-offend. This comes on the heels of a federal rule. There has been some discussion taking place about gun lockers in the Courthouses once again, but it is not expected to become a serious issue of consideration. Mr. Schwermer reported that HB 152 would add a \$95 surcharge of alcohol offenses. Discussion has also been taking place about the Supreme Court holding court in the remodeled Capital.

**13. NEW JUDGE CERTIFICATION: (Rick Schwermer)**

Mr. Schwermer provided information on Charlene Hartmann who was selected as the new Justice Court Judge for Manila Justice Court. Ms. Hartmann successfully completed her training and testing.

**Motion:** Judge Atherton motioned to approve Charlene Hartmann as judge for the Manila Justice Court. The motion was seconded by Judge Petry and passed unanimously.

**14. COMPUTER USE POLICY FOR JUDGES: (Brent Johnson)**

Mr. Johnson provided the Council with a memo and the current computer use policy for

judges. The policy for the judges currently mirrors the employee policy. Concern was expressed over the policy's statement that judges should not share their email password when many have their clerk log on to their email when the judge is out of the offices.

**Motion:** Judge Atherton motioned that Policy and Planning further review this policy. The motion was seconded and passed unanimously.

**15. ADJOURN**

The meeting was adjourned.